SINGLE BENCH

(F 107

CE 545—

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(C.G.)

.....3661.....

WRIT PETITION(C) NO. OF 2007

PETITIONER : Narad Ram Sahu,son of Shri Budh Ram Sahu,aged about 38 years,Ex. Sarpanch of Gram Panchayat Nawagaon,Tehsil-Magarlod,District-Dhamtari(C.G.)

P.F. No. 2528/07 R/T Sahu
Dated 4/4/07

V E R S U S

RESPONDENTS :
1. State of Chhattisgarh,through Secretary, Panchayat,D.K.S.Bhawan, Raipur(C.G.)
2. Director, Panchayat, Raipur,District-Raipur(C.G.)
3. Collector,Dhamtari, District-Dhamtari(C.G.)
4. Additional Collector,Dhamtari, District-Dhamtari,(C.G.)
5. Sub Divisional Officer/ Prescribed Officer,Dhamtari, District-Dhamtari(C.G.)
6. Chhummanlal Sahu,son of Shri Ghasiram Sahu,resident of Village-Nawagaon,Tehsil-Magarlod,District-Dhamtari(C.G.)

RECEIVED-COPY 4/4/07
CLERK to A. G. BILASPUR

OATH COMMISSIONER S.R. Kaushik BILASPUR TAHSIL AREA

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

90

HIGH COURT OF CHHATTISGARH : BILASPUR

S.B. : HON'BLE SHRI MANINDRA MOHAN SHRIVASTAVA, J.

Writ Petition (C) No.3061 of 2007

PETITIONER Narad Ram Sahu

Versus

RESPONDENTS State of Chhattisgarh & Ors.

Petition u/Article 227 of the Constitution of India

Appearance:

Shri Awadh Tripathi, counsel for the petitioner.

Shri Suryakant Mishra, Panel Lawyer for the State/respondents No. 1 to 5.

Shri Prateek Sharma, counsel for respondent No.6.

ORAL- ORDER

(Passed on 7.4.2011)

1. This petition has been filed by the petitioner aggrieved by the order dated 13th March, 2007 (Annexure P-6) passed in revision by the Director, Panchayat, whereby, the order passed by the Collector on 30th October, 2006, remanding the matter to the Sub-Divisional Officer, has been set aside.

2. Case of the petitioner is that while the petitioner was working as Sarpanch of Gram Panchayat- Navagaon, certain complaints were made, on which, proceedings were initiated against the petitioner and a charge sheet (Annexure P-1) was given which was replied by the petitioner vide Annexure P-2. Thereafter, the Sub Divisional Officer on 1.9.2006 passed an order holding that an amount of Rs.1,19,230/- is recoverable from the petitioner. That

91

order was challenged by the petitioner by filing an appeal before the Additional Collector, who, initially, vide order dated 11.9.2006 (Annexure P-4) stayed the operation of the order of Sub Divisional Officer and thereafter vide his final order dated 30th October, 2006 (Annexure P-5) set aside the order of Sub Divisional Officer and remanded the matter for proper consideration and enquiry in the manner directed therein. The order of the Addl. Collector was thereafter challenged in revision at the instance of respondent No. 6 -complainant. The Director, Panchayat, vide impugned order dated 13th March 2007 set aside the order of the Collector upholding the order dated 1.9.2006 passed by the Sub Divisional Officer (R)/Prescribed Authority, against which, this petition has been filed.

3. Assailing the correctness and validity of the order of the Director, which has affirmed the order passed by the Sub-Divisional Officer/Prescribed Authority, learned counsel for the petitioner submitted that the order passed by the Addl. Collector did not warrant any interference because the Addl. Collector, in its order, clearly recorded that the petitioner had submitted certain records relating to construction and upon perusal of the same, the Addl. Collector formed an opinion that the matter requires proper consideration on the basis of the records and the matter was therefore remanded for proper consideration. Learned counsel for the petitioner further submits that the order of the Sub Divisional Officer is also bad in law, because, the Sub Divisional Officer

92

heavily relied on an enquiry report, which report was never supplied to the petitioner and he was not shown any document and was also not given any opportunity to adduce his evidence. Learned counsel for the petitioner, therefore, submits that the opinion formed by the Sub Divisional Officer was perfunctory and was rightly interfered with by the Additional Collector.

4. On the other hand, learned counsel for the State/respondents No. 1 to 5 submits that the petitioner was afforded due and proper opportunity before the decision was taken by the Sub Divisional Officer that an amount of Rs.1,19,230/- is recoverable against the petitioner. He submits that a notice was given to the petitioner to show cause and the petitioner submitted his detailed reply. The Sub Divisional Officer considered the report of the Chief Executive Officer and also heard the concerned authority namely- Panchayat Inspector and the Enquiry Officer on 1.9.2006. Therefore, the order of recovery against the petitioner was justified. He further submits that even though the order of recovery was based on material collected during enquiry, on the basis of which, the charges were found proved by the enquiry officer, the Addl. Collector was not justified in interfering with such order and therefore the Revisional Authority was justified in interfering with the order of the Addl. Collector and upholding the order passed by the Sub Divisional Officer.

5. Learned counsel for the respondent No.6 argued that the petitioner while working as Sarpanch caused loss to the Gram

93

Panchayat and was also found keeping various articles and property belonging to Panchayat, in respect of which, on compliant made by respondent No.6, a detailed enquiry was made by the Chief Executive Officer. In that enquiry, the petitioner was also allowed to participate and his own statements were also recorded. He further submits that on many aspects, the petitioner had no answer and he completely failed to explain for certain irregularities, particularly those relating to the log -woods and submersible pump kept by him in the name of safe custody. He further submits that the petitioner has filed this petition stating that the proceedings against him have been taken under Section 40 of the Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as "*the Act of 1993*") and has challenged the same on such an assumption, which is completely erroneous, because, in fact, the Sub Divisional Officer proceeded against the petitioner under Section 92 of the Act of 1993 for the limited purpose of recovery. The Sub Divisional Officer formed an opinion based on material available on record and, therefore, it cannot be said that he acted in any manner which is arbitrary or violative of principles of natural justice. Lastly, it is submitted that the petition is not properly constituted inasmuch as though the petitioner has titled the petition as petition under Article 227 of the Constitution of India, in the relief clause, the petitioner has prayed for issuance of writ in the nature of certiorari.

94

6. I have heard learned counsel for the parties and perused the records.

7. In the petition before this Court, the petitioner has made very specific averments of fact in para-3 of the petition that the order impugned is in violation of principles of natural justice based on secret/preliminary enquiry and that he was not supplied the copy of enquiry report and was not shown any document nor given any opportunity to adduce evidence. These averments have gone un-rebutted by respondents 1 to 4. In para-6.1 of the grounds also, the petitioner has raised grievance that he was not afforded opportunity of being heard in respect of charges and the evidence of the opponents should have been taken in his presence and should have been allowed to see all the relevant evidence and given opportunity of cross-examination of witnesses. In the absence of any specific denial of these facts, one thing is clear that the enquiry report, which was heavily relied by the Sub Divisional Officer, was not supplied to the petitioner. The order of the Sub Divisional officer shows that it was enquiry report on the basis of which the Sub Divisional officer formed an opinion that the charges are proved.

8. The order passed by the Sub Divisional Officer on 1.9.2006 shows that the Sub Divisional Officer himself has not considered the charges against the petitioner nor has recorded any finding with regard to each of the charges after considering the evidence/material on record, nor he has taken into consideration

95

the defence of the petitioner. Taking into consideration the scheme of Section 92 of the Act of 1993, the Sub Divisional Officer is required to form an opinion. Such opinion is required to be based on objective consideration of the material on record. Therefore, the Sub Divisional Officer is required to undertake an exercise and consider material on record and record its own finding with regard to the fact that recovery of money is to be made. However, I find that the Sub Divisional Officer has not considered the matter and by merely referring to the report of the Chief Executive Officer, he has held the petitioner liable for recovery.

9. The Addl. Collector in its order dated 30th October, 2006 (Annexure P-5) recorded that the petitioner has submitted various documents, which show that the matter requires proper enquiry and after recording such finding, the matter was remanded to the Sub Divisional Officer. The Revisinonal Authority has interfered with the order of the Collector by recording that the Sub Divisional Officer considered the material on record to come to the conclusion that the amount of Rs. 1,19,230/- was recoverable from the petitioner, based on the report of the Chief Executive Officer, who found those charges as proved and that some other officers were heard by the Sub Divisional Officer before fastening liability on the petitioner. It has also been held that the complainant was not heard by the Collector and that the Sub Divisional Officer after inspection and assessment of detailed

96

enquiry report, muster-roll and Panchayat records, passed the order on 1.9.2006. As I have held hereinabove, the Sub Divisional Officer really did not enter into any exercise of examination and assessment of material available on record and, therefore, the finding of the Director, Panchayat in that regard is not correct. The other reason assigned by the Director, Panchayat, was that in the enquiry held by the Chief Executive Officer charges were found proved. However, in view of what has been stated above, that there is no denial of respondents No. 1 to 4 that copy of enquiry report was not supplied to the petitioner, interference in revision on that ground was not warranted. The third ground for interference that complainant was not heard, at the most, could be made a basis to remand the matter for consideration.

10. As far as the objection raised by learned counsel for the respondent No.6 that the petitioner has challenged the order of recovery as one passed in the proceedings for removal, I do not think it is such a substantial defect as to throw the petition on that ground. The contents of the petition, ground raised therein and the relief sought, show that the petitioner intends and has in fact, assailed the correctness and validity of the order of recovery and subsequent orders passed in revision by the Revisional Authority. As far as the objection with regard to the maintainability of the petition on the ground that though the petition is styled as petition under Article 227 of the Constitution of India, yet, a relief in the nature of certiorari has been sought,

97

suffice to say, the supervisory jurisdiction of this Court is wide enough to grant appropriate relief once it is found that the Tribunal has failed to act within the bounds of its jurisdiction. Therefore, notwithstanding that the petitioner has sought issuance of writ in the nature of certiorari, in the circumstances, this Court is having ample jurisdiction to treat the petition as petition under Article 227 of the Constitution of India and pass appropriate orders.

11. As a result of discussions hereinabove, I am of the view that the order dated 13.3.2007 (Annexure P-6) passed by the Director, Panchayat is not sustainable in law. The same is liable to set aside and is accordingly set aside. The matter shall now be remanded to the Sub Divisional Officer as per the order passed by the Addl. Collector on 30.10.2006 (Annexure P-5).

12. The Sub Divisional Officer shall supply to the petitioner, copy of the enquiry report and the documents attached therewith. The petitioner would be at liberty to submit his evidence on record. The Sub Divisional Officer shall consider the entire material on record and then decide the matter with regard to the recovery in accordance with the provision contained in Section 92 of the Act of 1993. The entire exercise shall be completed by the Sub Divisional Officer within an outer limit of 6 months from the date of receipt of copy of this order.

13. The petition is accordingly partly allowed.

Sd/-
Manindra Mohan Shrivastava
Judge

Praveen